

BARBARA A. MIKULSKI

MARYLAND

COMMITTEES:

APPROPRIATIONS

HEALTH, EDUCATION, LABOR,  
AND PENSIONS

## United States Senate

WASHINGTON, DC 20510-2003

December 7, 2010

Mr. David McIntosh  
Associate Administrator for Congressional  
And Intergovernmental Relations  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, Room 3426  
Washington, D.C. 20460-0001

Dear Mr. McIntosh:

I am forwarding a letter from one of my constituents, Mr. [redacted], who is concerned about property he owns at [redacted] which he is seeking to subdivide into 3 lots.

I am requesting that you please have the appropriate staff review this matter to determine what jurisdiction your agency may have. Please give this matter appropriate consideration, and send your response directly to Bart Kennedy in my Baltimore office, at the above address.

Thank you very much for your consideration. I look forward to hearing from you.

Sincerely,



Barbara A. Mikulski  
United States Senator

BAM:wbk  
Enclosure(s)

IN REPLY PLEASE REFER TO  
OFFICE INDICATED:



1629 THAMES STREET, SUITE 400  
BALTIMORE, MD 21231  
(410) 962-4510  
VOICE/TDD: (410) 962-4512

☐ 60 WEST STREET, SUITE 202  
ANNAPOLIS, MD 21401-2448  
(410) 263-1805  
BALTIMORE: (410) 269-1650

☐ 6404 IVY LANE, SUITE 406  
GREENBELT, MD 20770-1407  
(301) 345-5517

☐ 32 WEST WASHINGTON STREET  
ROOM 203  
HAGERSTOWN, MD 21740-4804  
(301) 797-2826

☐ THE PLAZA GALLERY BUILDING  
212 MAIN STREET, SUITE 200  
SALISBURY, MD 21801-2403  
(410) 546-7711

From:

10/01/2010

RECEIVED  
BALTIMORE

To: Senator Barbara Mikulski  
10 OCT -4 PM 2:18  
Mr. Bart Kennedy

Dear Mr. Kennedy

I would like to thank Senator Mikulski and yourself in advance for your support. My wife and I purchased property know as Lot 11, in 1970. The property is not waterfront and contains no wetlands. Lot 11 currently contains 2 individual homes with trees located at West and North property boundaries. No native trees are North, South or West of the exterior property lines. The local DEPRM has defined the property as a forest. I am requesting a minor subdivision to subdivide the 265 foot front, 1.92 acre lot into a 3 lots. Two lots one each for the 2 existing homes and the 3<sup>rd</sup> would have a common property line with Our Daughter's 60 foot wide property Lot 11. The 3<sup>rd</sup> lot would be transferred to our daughter at a future date. I would like for your office to verify which if any Government agency requires I apply one of two following options.

Options presented to me would require payment of approximately \$50,000 for reforestation of trees not taken down (when I asked why pay for trees not taken down I was informed if I didn't they would loose control). The other option presented was pay approximately \$4,000 and relinquish in a protective covenant by deed my property rights on approximately 50% of Lot 11. The payment and/or Deed transfer are required prior to opportunity to subdivide. I have been advised there will be no subdivision without making protective covenants. I have also been advised the chances of being able to subdivide without payment and a Covenant are between Slim and none with Slim on a train out of town. The covenant would deny me and subsequent property owners the right to cut grass, cut trees, pull weeds, have a picnic table, domestic pets etc. I asked DEPRM representative Mr. Glen Shafer if I had 100 acre and requested to subdivide ¼ acre for a dwelling would I be required to place 99.75 acre in a protective covenant and Mr. Shafer said "yes that is the law". DEPRM advised me the regulations were required by Baltimore County, Baltimore county representatives advised me they were abiding by Maryland regulations, and Maryland representatives told me they are abiding by EPA regulations. None of the Government representative or acquaintances I have contacted believe this interpretation to be within the spirit or intent of Our Government. As some have stated "I do not have to agree with the law but required to implement the law".

I am copying you correspondence between DEPRM and myself. I am trying to subdivide but more importantly determined to make a serious effort to recover rights being denied many. I believe implementation of existing regulations goes well beyond intent. In that effort I believe I am also working on our elected Representatives behalf.

Sincerely



**BALTIMORE COUNTY**  
MARYLAND

JAMES T. SMITH, JR.  
County Executive

JONAS A. JACOBSON, *Director*  
*Department of Environmental Protection*  
*and Resource Management*

August 26, 2010

RE:

Dear Mr.

Environmental Impact Review (EIR) has received your August 3, 2010 letter regarding your property at . This property received a permit in 2005 to construct a second house on the existing lot (Lot 11) with a "use division line" allowed by Baltimore County Zoning Regulations. You are now proposing to subdivide Lot 11 into three lots: one lot around the original dwelling ( , Lot 2), one lot around the 2005 dwelling ( , Lot 3), and a third lot (proposed Lot 1) that currently has no dwellings on it. 3,850 square feet of forest are proposed to be cleared on Lot 1 for a future dwelling.

While mitigation fees were paid for the forest clearing necessary for the construction of , EIR allowed the recordation of the Critical Area Easement in Baltimore County Land Records to be deferred until such time that was subdivided from Subdivision of Lot 11, whether into two or three lots, will require compliance with all relevant Critical Area requirements including, but not limited to, **recordation of the Critical Area Easement and associated Declaration of Protective Covenants, reforestation for forest not retained in Critical Area Easement, and limits on the amount of lot coverage over the entire property to be subdivided.**

If you have any questions regarding this correspondence, please contact me at 410-887-3980.

Sincerely,

Regina A. Esslinger, Supervisor  
Environmental Impact Review

From:

August 3, 2010

To: Department of Environmental Protection and Resource Management

Subject:

Tax #

RE:

- Discussion with DEPRM @
- Contact DEPRM in an effort to "resolve any lengthy or serious conflicts up front"

Discussions with various DEPRM representatives has indicated various conditions be met prior to approval of a minor subdivision request. The property Lot 11 (1.92 acre) was purchased in 1970 (grandfathered lot) currently contains 2 dwellings on defined lots. The 1<sup>st</sup> constructed dwelling was built in 1975 (prior to CBCA regulations). The 2<sup>nd</sup> dwelling building permit application #B599292 was received by DEPRM July 26, 2005 and subsequently approved. Permit #B599292 was approved on the condition of Use Division line established, **mitigation fees being paid** for defined lot area and impervious surface limits being met (fulfilling 2005 CBCA regulations). Since 1970 Lot 11 has been development with environmental impact best management practices in mind.

Lot 11:

- DEPRM classified Lot 11 as "predominantly forested".
- Property Zoned DR 5.5
- No lot 11 disturbance is required or requested at this time
- Lot 11 is Not a Riparian Forest property.
- Lot 11 is Not water front property, contains no stream system
- Lot 11 is NOT in the 100 foot buffer.
- Lot 11 is Less than 2% grade.
- Lot 11 is at a higher elevation than surrounding property.
- Tree portion of property is at highest elevation.
- Lot 11 can not by its higher elevation filter upstream property.
- Trees are approximately 500 feet from tidal waters.
- House Bill 525 States regulations shall be equally applied.
- Adjacent water front properties have not relinquished their property.
- ~~Any future disturbances would comply with then existing regulations.~~

I understand Baltimore County MD DEPRM positions for : minor subdivision to be:

- Relinquishing property rights by Deed the greater portion of Lot 11 (1.92 acre)
  - Provide Baltimore County access.
  - No vegetation disturbance.
  - No soil Disturbance.
  - No picnic area, table etc.
  - No structure, shed etc.
  - No Critters.
- Pay to Baltimore County mitigation fees of over 50% of the value of the land
- Pay mitigation fees for all anticipated or subsequent disturbed trees (forest) disturbance.
  - Any future development under Section 4 applications building etc. would they fall under regulations current at that time.

It was suggested by Baltimore County Personnel for me to subdivide Lot 11.

Subdividing assist Baltimore County define current and future services and development needs as well as taxing parameters. It is also advantageous for my Children or others so they would not go through subdividing process. I am trying to do that now. In general I do not believe it was the intention of Our Elected Officials for Me to give up most of my property and subsequently My Children's property in order to have a Minor Subdivision. I am not anticipating any tree removal but I am willing to pay mitigation fees for typical tree removal as though development was anticipated, plot attached.

I understand resolve potential conflicts is the next step in the subdivision process. I would appreciate a written response at Your earliest convenience.

Respectfully

# CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

## Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

### Notice of Proposed Action

[10-236-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to amend:

- (1) Regulation .01 under COMAR 27.01.01 General Provisions;
- (2) Regulation .04 under COMAR 27.01.02 Development in the Critical Area; and
- (3) Regulation .01 under COMAR 27.01.05 Forest and Woodland Protection.

This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at a public meeting held on July 7, 2010, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

### Statement of Purpose

The purpose of this action is to amend the forest and developed woodland regulations to clarify the definition of developed woodlands, to ensure that the protection and mitigation standards afforded to forests are consistently applied to developed woodlands, and to require mitigation for the clearing of a single tree when it is associated with a development activity that results in a structure or lot coverage.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

The proposed action has no economic impact.

### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

### Opportunity for Public Comment

Comments may be sent to Lisa Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call (410) 260-3478, or email to lhoerger@dnr.state.md.us, or fax to (410) 974-5338. Comments will be accepted through September 13, 2010. A public hearing has not been scheduled.

## 27.01.01 General Provisions

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland

### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (19) (text unchanged)

(20) "Developed woodlands" means an area of trees or an area of trees and natural vegetation that is interspersed with residential, commercial, industrial, institutional, or recreational development.

(20-1) — (78) (text unchanged)

## 27.01.02 Development in the Critical Area

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland

### .04 Limited Development Areas.

A. — B. (text unchanged)

C. In developing their Critical Area programs, local jurisdictions shall use all of the following criteria for limited development areas:

(1) — (2) (text unchanged)

(3) For the alteration of forest and developed [woodland] woodlands in the limited development area, the jurisdiction shall apply all of the following criteria:

[(a) Developed woodland vegetation shall be conserved to the greatest extent practicable;]

[(b)] The total acreage in forest [coverage] and developed woodlands within a jurisdiction in the Critical Area shall be maintained or, preferably, increased;

[(c)] (b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;

[(d)] (c) If a developer is authorized to [remove from forest use] clear more than 20 percent of a forest or developed [woodland] woodlands on a lot or parcel, the developer shall replace the forest or developed [woodland] at a ratio of 1.5 acres for each acre within the total acreage of [woodlands] at 1.5 times the areal extent of the forest or [woodland removed] developed woodlands cleared, including the first 20 percent of the forest or developed [woodland removed] woodlands cleared;

[(e)] (d) A developer may not [remove from forest use] clear more than 30 percent of a forest or developed [woodland] woodlands on a lot or parcel, unless the local jurisdiction:

(1) — (11) (text unchanged)

[(f)] (e) If a developer is authorized to [remove] clear any percentage of forest or developed [woodland] woodlands from forest use under §C(3) of this regulation, the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments.

(4) In addition, local jurisdictions shall adhere to the following criteria for forest and woodland development:

(a) (text unchanged)

(b) [Grading] Local permits shall be required before forest or developed woodland is cleared;

(c) Forests and developed woodlands which have been cleared before obtaining a [grading] local permit, or that exceed the maximum [area] clearing allowed in §C(3) of this regulation shall be replanted at three times the areal extent of the cleared forest and developed woodlands;

(d) If the areal extent of the site limits the application of §C(3) and (4)(c) of this regulation, alternative provisions or reforestation guidelines may be